

# Exhibit B

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

24 Cr. 418 (MMG)

5 SHYMELL EPHRON,

6 Trial

7 Defendant.

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8 New York, N.Y.  
9 April 11, 2025  
10 11:49 a.m.

11 Before:

12 HON. MARGARET M. GARNETT,

13 District Judge

14 APPEARANCES

15 MATTHEW PODOLSKY

Acting United States Attorney for the  
Southern District of New York

16 BY: RYAN ALLISON

17 ANDREW JONES

LISA DANIELS

18 Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

20 BY: HANNAH McCREA

21 AMY GALLICCHIO

MICHAEL ARTHUS

P4BQeph2

1 MR. JONES: The check one and move on doesn't solve  
2 any problem. So we don't think that that's useful.

3 I will note, I just caught the Count Two, I think the  
4 special verdict form just copied over from Count One, but it's  
5 different. I mean, I guess it doesn't matter, I'm asking for  
6 it to come out, but if it doesn't, it's first degree rape, not  
7 third degree rape.

8 THE COURT: Oh, I see.

9 MR. JONES: Hopefully, that doesn't matter at all.

10 THE COURT: I will take all of that under advisement  
11 and let you know Monday morning.

12 Anything else, Mr. Arthus, that you want to raise on  
13 the verdict form?

14 MR. ARTHUS: Did we cover -- this may have already  
15 been captured in Count Two on the special interrogatories  
16 should I guess be omitted if the government --

17 THE COURT: Yes. If we do a special verdict form,  
18 we'll have to fix all of it for Count Two because it's the  
19 wrong -- we've just duped over the underlying issues from Count  
20 One, and they're slightly different, so we will fix it if we do  
21 it at all.

22 And on the Counts Three through Seven, any issue?

23 MR. ARTHUS: Not from us, no, your Honor.

24 MR. JONES: No, your Honor.

25 THE COURT: Okay. Let's talk about Dr. Rocchio.

P4BQeph2

1           So I have reviewed your letters, and just so we can  
2 focus our time, I don't agree with the defense argument that  
3 this requires some opening of the Daubert hearings on another  
4 round of briefing and all of that. The issues related to the  
5 inapplicability of where the defense's view that studies or  
6 treatment or literature on prepubescent children is not  
7 relevant to this case or that there's issues that differentiate  
8 them, all of that was fully fleshed out in the original Daubert  
9 briefing, and in part led to my ruling that I thought many of  
10 the proffered topics on which Dr. Rocchio was originally  
11 proposed to testify were not a good fit for this case.

12           And no reason to doubt her expertise, but rather that  
13 there was, you know, as with the last part of the Daubert  
14 inquiry, there was a lack of fit that I did not think the  
15 testimony on many of those topics would be helpful to the jury  
16 to decide the issues in this case.

17           So I think your record is made, Mr. Arthus, but I just  
18 don't want to spend time on that. I think -- I don't agree,  
19 and I think we can resolve the issue one way or the other based  
20 on the extensive briefing and discussion that we've had, both  
21 at the time of the original Daubert motions and then the issues  
22 that we've discussed throughout the case as this issue has sort  
23 of re-arisen.

24           I want to give you all a chance to speak, but I guess  
25 what I am envisioning, if I were to allow it, is that

P4BQeph2

1 essentially the government after eliciting Dr. Rocchio's  
2 qualifications would elicit from her as to -- and let me  
3 just -- I don't think that this concept of disclosure is best  
4 understood as a process that occurs over time. That seems to  
5 me to fall on the wrong -- on the wrong side of the narrow  
6 grounds on which I'm open to hearing argument about  
7 Dr. Rocchio.

8           And what I would envision is a fairly tightly cabined  
9 direct testimony that goes directly to the issue of essentially  
10 how come and is it based on studies, the literature and her own  
11 experience of treating patients for victims to not go to law  
12 enforcement, to not go right away, to not disclose any kind of  
13 sexual victimization. Broadly, you know, that sort of the  
14 patterns that she believes are documented in the literature and  
15 in her own practice of treating victims of some kind of --  
16 victims of some kind of sexual victimization, again, limited to  
17 adolescents and adults, to not make these various kinds of  
18 disclosures or not do so right away.

19           And then her testimony as to, again, based on academic  
20 studies and her own treatment experience, to describe some of  
21 the reasons why disclosure or the seeking of help or  
22 intervention is either not sought or not sought right away.  
23 And as to those topics, I think they have squarely been put at  
24 issue in the case. They wouldn't be impracticable strain based  
25 on the Supreme Court's decision in *Diaz*, again, provided

P4BQeph2

1 they're cabined to like, okay, is this a common thing? What is  
2 the parameters of its commonality? And what are some of the  
3 reasons based on the literature and her own practice why that  
4 occurs?

5 Limited in that way, I think there is ample cross. I  
6 mean, I could write the cross myself. You don't need my help,  
7 but some of the topics of cross that I would be anticipating or  
8 envisioning would be essentially cross about different kinds of  
9 situations, right? That a teenager who believes she's in a  
10 romantic relationship with an adult teacher at her school,  
11 that's a different situation from, for example, you're out  
12 jogging -- you know, the situation that our juror, Mr. Barry,  
13 has described to us: You're out for a jog and a stranger drags  
14 you into the bushes and forcibly rapes you, which is also  
15 different from the context of where a teenager might meet an  
16 adult in a social situation and wish to pursue a romantic  
17 relationship with them and believe that it's an appropriate and  
18 mutual romantic relationship. That all of these situations are  
19 different and elicit from her, you know, if you wish, how they  
20 are different.

21 I'm not cabining any cross if she testifies. I'm just  
22 making a record about what I think could be fertile ground and  
23 that any such testimony could be well tested on cross.  
24 Eliciting from her that some victims or even many victims do  
25 disclose, do report, do seek help, do seek medical attention,

P4BQeph2

1 and laying out the contours of that and how, you know, the full  
2 range of reactions and type and timing of disclosure are ones  
3 that I presume she would say, oh yes, that does happen. As  
4 well as eliciting from her that, you know, she has no idea  
5 without treating the person, meeting the person, evaluating  
6 their circumstances, why any particular person would or would  
7 not do any of the things that, you know, have already been  
8 elicited from her.

9 And so, you know, my concern - and then I want to hear  
10 from you all - is I'm certainly sensitive to the issue that the  
11 defense raised in their original Daubert motions, that we  
12 discussed at the Daubert hearing, not at a testimony hearing,  
13 but, you know, our oral argument on the Daubert issue and that  
14 we've discussed throughout this trial; that expert testimony  
15 not be substituted for the actual testimony of available  
16 witnesses.

17 However, in thinking about the case, and as I  
18 mentioned yesterday, my concern is that I personally think  
19 based on my own life experience that it's quite likely that our  
20 jurors who are young women in their twenties, many of them,  
21 that's a subset of our jurors, have had life experiences that  
22 would allow them to evaluate the reasons why a young woman  
23 might not leave a dangerous situation because she feels  
24 responsible for her friend or the reasons why a young woman who  
25 is sexually assaulted might not go to the police, might not

P4BQeph2

1 tell their parents, might not tell anyone.

2 Likewise, I personally think that our female jurors  
3 who are of a significantly older generation, of which we have  
4 several - I think three off the top of my head - female jurors  
5 who are in their sixties, seventies, eighties might well be  
6 thinking, let me tell you how it was in the Sixties. A boy  
7 could pin you down in his car and rape you and you did nothing.  
8 You went home, you took a bath, you went to sleep, you never  
9 told anyone because no one would believe you.

10 But I'm not sure that -- that's sort of my personal  
11 belief that we have plenty of jurors who have sufficient life  
12 experience to evaluate and weigh the testimony that they've  
13 heard in this case. My concern is (A) I'm not sure that's  
14 correct, and I don't want to import my own milieu and life  
15 experience and perception of the jurors to unduly influence the  
16 relevance of this testimony.

17 And, second, I'm not sure anyone would want the  
18 defense or the government to set up a scenario where in the  
19 jury room jurors are not just doing what I'm going to tell them  
20 to do, which is to bring their common sense and life experience  
21 to evaluating things, but bringing events in their own lives  
22 that they know about into the jury room in a way that I think  
23 in the way that I've described might go beyond what is  
24 appropriate in terms of jurors using their common sense and  
25 judgment and general life experience to evaluate the witnesses



P4BQeph2

1 and to deliberate together about what they think.

2 And so all of that thinking is kind of animating my  
3 invitation to hear again from you all, and my view that, at  
4 least right now, not having heard from you all orally, that  
5 narrowed in the way that I've described, tested by  
6 cross-examination, that we are then putting something in the  
7 record that has happened in open court and is testified  
8 cross-examination that the jurors can, if not rely on, draw on  
9 if they choose, both the direct and cross, to have some --  
10 something, something meatier and something that is actually  
11 evidence in this trial that they can use to evaluate something  
12 that I think both sides would agree is a central issue in the  
13 case, which is what to make of the victim's testimony and the  
14 underlying conduct about which they testified.

15 So all of that is to sort of frame my own thinking  
16 about the issue. And with that, I don't know, Ms. Daniels  
17 Mr. Jones, Mr. Allison.

18 MR. ALLISON: It's me, your Honor.

19 THE COURT: Okay.

20 MR. ALLISON: I don't have much more to add beyond  
21 what you said. We're happy to limit it the way you described.  
22 I do think it's important, but, I think, like a lot of people,  
23 might hope that folks can think about sexual abuse victims in  
24 the way that you anticipate some of the jurors may be able to,  
25 but I don't think we should assume that people are thinking

P4BQeph2

1 about it that way. And I do think that a lot of the conduct  
2 that we all sort of know this -- a lot of conduct for sexual  
3 abuse victims --

4 THE COURT: You have to keep your voice up. I can  
5 hear you fine, but knowing 906 as I do, I'm confident that  
6 defense counsel is struggling a little bit to hear you.

7 MR. ALLISON: Just that some of the conduct is  
8 counterintuitive for sexual abuse victims. It's not within the  
9 ken of many of the average jurors, and I don't think we can  
10 sort of assume that they know that people who are sexually  
11 abused don't often make reports immediately.

12 I think it is also important, as your Honor noted, not  
13 to give any one juror undue influence over the rest of the  
14 jurors based on their own life experience, and this will  
15 essentially even it out. And it will even it out in whatever  
16 way it comes out. You know, perhaps cross-examination shows  
17 that, you know, what Evelyn did undermines her credibility.  
18 Perhaps it will show that it doesn't. But the point is that  
19 everybody will be acting from the same set of information,  
20 tested by cross-examination in open court. We do think that's  
21 appropriate.

22 Look, the defense is counting on the counterintuitive  
23 nature of the conduct, right? That's one of their central  
24 credibility attacks on Evelyn - the counterintuitive nature of  
25 how she responded when being abused. And we're just trying to

P4BQeph2

1 put forward some evidence to rebut that. It's directly  
2 responsive. We think it's appropriate and the cabined way that  
3 you discussed it, short direct examination, and we think it's  
4 appropriate for the reasons that you said.

5 THE COURT: Mr. Arthus?

6 MR. ARTHUS: So, first, just about the jurors  
7 themselves -- and also, I just want to, you know, I forgot  
8 something on the charge, so we are going to have to go back to  
9 the charge at some point, but stick with this for now sorry.

10 THE COURT: Just so everyone knows. I have a PI  
11 hearing which is supposed to start at 1:30. I'm obviously  
12 going to be a little bit late for that. I mention that not to  
13 limit your ability to make a full record. And, Mr. Arthus,  
14 tell me everything you want to tell me before I make a final  
15 decision, but only so that you understand that I have a little  
16 bit of a time constraint.

17 MR. ARTHUS: I think most of our positions are in our  
18 letter.

19 On the jurors' life experience, we heard from almost  
20 every juror in the back in that jury pool. And of the jurors  
21 that we have, the young and old, I think a majority of them not  
22 only disclosed stories in response to certain questions, but  
23 stories that involved delayed disclosure. So these jurors have  
24 an understanding of this.

25 THE COURT: I don't want to -- I don't mean to

P4BQeph2

1 interrupt you, Mr. Arthus, but I do think it's worth clarifying  
2 that I don't think that's correct, because all of the jurors --  
3 we heard from so many jurors, so I don't dispute that. But of  
4 the jurors who actually ended up on our jury pool, as to the  
5 sexual questions, almost none of the jurors that are actually  
6 on our jury had issues. So just by -- I don't have my jury  
7 board in front of me, but I remember it quite well. So  
8 obviously Mr. Barry, but Jurors 1 and 2 we did not speak to in  
9 the back.

10 MR. ARTHUS: I'm trying to remember.

11 THE COURT: Mr. Lefever, the IT guy; Ms. Eagle, who  
12 works in Bronx family court; and then we have Mr. Barry.  
13 Everyone has Mr. Barry.

14 MR. ALLISON: Julian Rivera is next. We did not speak  
15 to him in the back.

16 THE COURT: Right, we didn't speak to him in the back.

17 MR. ARTHUS: Ashley Rodriguez.

18 THE COURT: We did speak to her, yes.

19 MR. ARTHUS: Did discuss a disclosure.

20 THE COURT: The last juror in the front row.

21 MR. ARTHUS: I think that's Olivia Nash.

22 THE COURT: Right, Olivia Nash, we did not speak to  
23 her in the back. We have a number of jurors in the second row  
24 we didn't speak to. The only juror I can remember in the  
25 second row that we spoke to in the back about the sexual

P4BQeph2

1 questions --

2 MR. ARTHUS: There were two. So there was Kathie  
3 Gordon.

4 THE COURT: Yes, Kathie Gordon, I remember her. And  
5 Sarah Garrison.

6 MR. ARTHUS: Both of whom involved delayed disclosure  
7 as well.

8 THE COURT: Yes. But, if anything, I think this  
9 recitation is kind of illustrating my point, which in any jury,  
10 it's not that every juror will have some personal appearance to  
11 draw on, but this little exercise kind of highlights what is  
12 giving me pause, right, that in terms of not importing my own  
13 views as to what I think is the typical knowledge of women of  
14 any age, and some men too, of course - I don't mean to limit it  
15 either as victims or knowledge of victims only to women - but  
16 we all, I mean, it's a truth in the world that women are much  
17 more likely to be victims of sexual crimes.

18 And I think in fact the jury that we actually have  
19 kind of illustrates a basis for my concern; that there may  
20 be -- it just illustrates a basis for my concern that I don't  
21 know, and I don't want to overly weight my own sense of what is  
22 in the common knowledge and experience of jurors, because I'm  
23 not sure an actual jury supports that based on what they  
24 disclosed, which is just all we can go on, and that we would  
25 all be better served by having jurors operate off a common set

P4BQeph2

1 of -- a common pool of testimony, whether they reject -- I  
2 mean, again, as I've said, I think there would be ample cross  
3 for such a witness and that you would -- both sides would have  
4 arguments to be made in closing about whether Dr. Rocchio's  
5 testimony illuminated or did not illuminate something about  
6 this case.

7 MR. ARTHUS: I think I can get to the heart of our  
8 concern probably --

9 THE COURT: Again, I'm not trying to cut you off. I  
10 think we should all operate off the same set of facts.

11 MR. ARTHUS: Yes. There is a heart of our concerns,  
12 which is, first the proposed testimony would involve  
13 Dr. Rocchio saying things like: Individuals often fear they  
14 will get in trouble, fear that others will blame or judge them,  
15 fear, shame, guilt, self-blame, confusion.

16 Evelyn testified to none of those things, and there's  
17 a concern that if that is introduced into this trial, the jury  
18 may go into the back and start asking themselves, well, Evelyn  
19 didn't testify to those things, but maybe that's what she was  
20 experiencing. And there is no effective way for us to  
21 cross-examine Dr. Rocchio about that.

22 And the reason is this: I can't good ask those  
23 questions that the Court posed because I don't know what the  
24 answers are. Dr. Rocchio falls back -- and I've read through  
25 all of her prior testimony. She falls back on the literature

P4BQeph2

1 she's reviewed, her interviews with patients. And, I mean -- I  
2 don't mean this disrespectfully. I just mean this in looking  
3 at her expert testimony, I think I found one instance where she  
4 actually answered yes or no. Like it's sort of like the Al  
5 Hernandez; everything goes in a paragraph. I can't ask her are  
6 there situations where a teenager might be in a romantic  
7 situation. Her answer to that may very well be extraordinarily  
8 damaging to us. And it would be borderline malpractice for me  
9 to ask that question on cross not knowing what the answer is  
10 because I have not had exposure to the full range of literature  
11 that she's read or patients that she's interviewed. I can't  
12 ask her that because I don't know what the answer is.

13 So the only way I can challenge it is basically  
14 challenging she's getting paid a lot of money and hasn't met  
15 the victims here, the alleged victims here, and that's not  
16 going to be that effective with the jury, because the jury is  
17 going to go back and they're going to say a psychologist  
18 testified to all these phenomena that a lot of other children  
19 had, and maybe Evelyn has those too, but that's not what Evelyn  
20 said. Evelyn said I didn't tell because I wanted to protect my  
21 friend, I don't trust the police, and I was waiting basically  
22 for my mom to ask and to tell her. This is barely even a  
23 delayed disclosure in the case. It's delayed disclosure in the  
24 sense that she didn't make an immediate report; that she said  
25 she told Violet the day they got out of Mr. Ephron's apartment.

P4BQeph2

1 THE COURT: Right, but much of the extensive portions  
2 of the cross -- which is no criticism; you're doing an  
3 excellent job Ms. Gallicchio -- were about the many  
4 opportunities that Evelyn would have had to get help from law  
5 enforcement if she had sought to do so during the time that she  
6 was at Mr. Ephron's apartment, and she did testify a couple of  
7 times to like "I felt trapped. I didn't know what else to do.  
8 I thought of things to do, and I sort of tried to do them but  
9 they didn't work out." Or at one point I think she said, you  
10 know, as to like the last occasion of a forcible rape  
11 allegation that -- I'm sorry, sir. Are you here for the tennis  
12 hearing? It's going to be in 110. We are obviously going to  
13 be starting a little bit late, but it's going to be in 110.  
14 You're welcome to stay here, but you had a tennis hearing look  
15 about you, so I thought I would help you out. Okay. Thank  
16 you.

17 Likewise, sir. Are you here for the tennis hearing?

18 UNIDENTIFIED PERSON: No, I was just auditing.

19 THE COURT: You're welcome to stay. I have another  
20 matter in a different courtroom that I expect a lot of  
21 reporters you're welcome to stay. It's only that I want to  
22 make sure that people who are interested in the tennis hearing  
23 are in the right place. Okay.

24 (Off the record)

25 THE COURT: I think on the last instance, she -- after



P4BQeph2

1 they left the precinct and went back with Mr. Ephron to his  
2 apartment, she said something like, "Well, at that point I had  
3 given up, and I guess I just thought this is going to happen no  
4 matter what."

5 MR. ARTHUS: Yeah.

6 THE COURT: "And there's nothing I can do about it."  
7 So I'm not sure -- I raise those things because I'm not sure I  
8 agree that there isn't testimonial evidence of sort of a range  
9 of influences, motivations, and all of that. And I recognize  
10 that your argument is, fine, she testified to those things. A  
11 jury can evaluate it and decide whether they agree or not. But  
12 I think it doesn't really solve for me this core issue is that  
13 I think it is a truth in the world that it is extraordinarily  
14 common for victims of sexual crimes to not go to the police, to  
15 not tell even their closest family and friends about what  
16 happened, and that that is factual information that is  
17 relevant -- I mean, if the parties want to work out a  
18 stipulation to that as a fact, I will entertain it. I'm not  
19 sure the government would agree, but, at bottom, I just can't  
20 get past or I have an abiding concern about the fact that that  
21 is a fact in the world, and I remain uncertain about the extent  
22 to which it is a fact that is in the common knowledge of jurors  
23 in the way that like it is common knowledge that, you know,  
24 people might be willing to lie about someone to get a benefit  
25 for themselves or many of the other types of situations that I

P4BQeph2

1 think courts have pretty consistently held. Like, yes, make  
2 your arguments. Everyone can understand why someone would lie  
3 to get a benefit for themselves, just as one example.

4 But I think this fact, which I don't think the defense  
5 is really disputing, I'm not sure that -- I remain unsure as to  
6 whether my sense that I know that to be true is truly common  
7 knowledge. I really have serious concern about that. And a  
8 serious concern that because that knowable fact is not part of  
9 this record might be something that the jurors have wildly  
10 different experiences of or views about that without some  
11 evidence about that and your ability to test it through  
12 cross-examination, and I don't agree that you -- what could I  
13 possibly ask her? It's too risky. I reject that. I'll write  
14 the cross-examination for you and give it to you. I know you  
15 don't want me to. I'm just -- for the record, I'm just being a  
16 little bit flip about that. But I will -- just step aside,  
17 Mr. Arthus, I'll do it myself.

18 I do think that there is fertile cross that you can do  
19 without eliciting answers that are unduly prejudicial to your  
20 client. And that even a three-question cross might be  
21 extraordinarily effective in getting the information that you  
22 would want so that you can tell the jury: "Whatever  
23 Dr. Rocchio told you, it doesn't help you at all to decide this  
24 case."

25 I'm not saying I think that's true, but I think it is

P4BQeph2

1 certainly possible to develop through cross-examination the  
2 ability to make that argument. But I don't see another way  
3 that a knowable fact, which I think is highly relevant to both  
4 parties, both sets of lawyers' views of this case, to have it  
5 happen in open court and allow the jurors to then accept it,  
6 reject it, decide, okay, that's a fact, but that doesn't  
7 help -- you know, I don't -- I, nonetheless, am weighing that  
8 fact and coming to my own assessment of these facts here and  
9 the witness's credibility and all of that.

10 And so I -- I guess it would be helpful to me,  
11 Mr. Arthus, to understand what your answer is to that.

12 MR. ARTHUS: Yes. And I think that really gets to the  
13 heart of the matter for us, which is we're not in any way  
14 asserting nor are we going to assert to the jury that delayed  
15 disclosure does not exist; that people wait to delay. We're  
16 not going to make that argument. What the heart of the matter  
17 here for us is, is that our argument is that the reasons Evelyn  
18 provided, they're not counterintuitive. A juror will  
19 understand when someone who -- if they've credited Evelyn's  
20 testimony, someone felt that they were held captive, couldn't  
21 escape, would not feel the ability to call the police. A juror  
22 will understand that someone with Evelyn's background with the  
23 way that she behaved when the police showed up, may not trust  
24 the police to tell them that. They will understand that.

25 If Dr. Rocchio comes in and starts proposing -- I

P4BQeph2

1 think this is the what we're most concerns about. If she comes  
2 in and starts proposing alternative probable explanations that  
3 Evelyn did not give, that's where we start to worry that that  
4 is put in the jury's mind. I don't think it's the matter of  
5 Dr. Rocchio coming in and saying sometimes people don't  
6 disclose. I don't think we would contest that fact. It's the  
7 alternative explanation she would provide, which are things  
8 like same, self-blame. Maybe there were things Evelyn  
9 experienced but she didn't testify to them. They both would be  
10 alternative explanations and they would be prejudicial  
11 explanations because they could engender sympathy in a way that  
12 is just being injected by an expert here. That is the heart of  
13 our concern is the alternative explanations that could be  
14 offered; that particular portion of Dr. Rocchio's testimony.

15 If it was just she got up there and testified: A lot  
16 of teenagers don't report it, I don't think I would even  
17 cross-examine her on that because that's clearly true. It's  
18 the alternatives.

19 THE COURT: Mr. Allison.

20 MR. ALLISON: Thank you, your Honor.

21 Dr. Rocchio just getting up there and saying a lot of  
22 teenagers don't report is not enough substance for the jury to  
23 understand the nature of her opinions and what she's saying. I  
24 simply don't agree with Mr. Arthus that Evelyn didn't provide  
25 explanations that are consistent with what Dr. Rocchio is

P4BQeph2

1 talking about. For example, Evelyn said that she didn't tell  
2 her mother until after she stopped eating and stopped drinking,  
3 and her mother noticed it and then asked her about it, which is  
4 consistent with feeling shame and embarrassment about what  
5 happened.

6 You know, she described concerns about being believed  
7 by Violet and others if she were to say what Shy was doing to  
8 her in the moment. So she did describe those feelings. And to  
9 the extent that Mr. Arthus thinks that, you know, Evelyn's  
10 descriptions of her reasons for not providing disclosure don't  
11 map on to exactly or don't map on to what Dr. Rocchio is  
12 saying, then go ahead in closing argument and say Evelyn didn't  
13 say any of that. That wasn't any of the reason for her failing  
14 to disclose. She's really failing to disclose because she was  
15 lying or whatever.

16 But it's not the case that Evelyn didn't say anything  
17 that's consistent with what Dr. Rocchio would say are reasons  
18 for failing to provide disclosure. The issue is teed up by the  
19 defense, as you noted, and Dr. Rocchio needs to be able to  
20 provide some substance to explain this phenomenon to late  
21 disclosure so the jury can properly understand what she's  
22 talking about.

23 THE COURT: Okay. I am going to allow the testimony  
24 for all the reasons that I have described today and described  
25 originally in reserving on this issue. I want to be absolutely

P4BQeph2

1 clear that the testimony has to be limited in the ways that  
2 I've set out today.

3           The other issue that I reserved on at the time of the  
4 original Daubert ruling about memory and the ways that trauma  
5 or sexual assault can affect memory, I'm not going to allow  
6 that. I don't think -- I don't have the same concerns that  
7 I've described as to that issue and I don't think any expert  
8 testimony on that would be helpful to the jury or to the  
9 parties. So I do think it has to be tightly cabined in the way  
10 that I've described today, and I'm certainly happy to police  
11 that, and, you know, I will give you some latitude on cross,  
12 Mr. Arthus, or whoever is going to do the cross, to elicit all  
13 the things that I think are relevant under the Supreme Court's  
14 ruling in *Diaz* that, you know, the fact that some people act --  
15 some people who are in certain situations act in a certain way,  
16 may or may not tell you anything about the actions of a  
17 particular person and a particular factual circumstance, but I  
18 do think that cabined in the way I've described, that that  
19 testimony can be well and adequately tested by  
20 cross-examination, and to put before the jury whatever  
21 consideration or weight they want to give to it an issue that  
22 has happened in open court, is tested by cross and allows  
23 counsel for both sides to make whatever arguments in closing  
24 that they think are appropriate for the jury both about the  
25 weight they should give to Dr. Rocchio's testimony, if any, as

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1 well as how it does or does not bear on what the evidence and  
2 testimony from the witnesses has been. But I just think on  
3 balance that the limited testimony fits within Daubert, which  
4 is to ensure that all parties -- you know, that the evidence  
5 that anyone is asking the jury to rely on, inferences they're  
6 asking them to draw based on what actually occurred in court  
7 and not our own collective projections onto what might be  
8 within a juror's common experience or life experience because,  
9 as I've said, I'm troubled by not projecting my own life  
10 experience and assuming that it is widely shared by the jurors.

11 So that's my ruling. I understand you have all your  
12 objections preserved, Mr. Arthus.

13 MR. ARTHUS: So just so I know, it's basically the  
14 last paragraph on page 8 and the statistical information,  
15 that's what the testimony is limited to.

16 THE COURT: Well, I mean, I put it in my own words at  
17 the outset of this discussion of the issue of, you know, how  
18 common based on both the academic literature and her own  
19 treatment experience is it for adolescent or adult victims of  
20 sexual crimes to not go to law enforcement, not seek medical  
21 attention, not tell a variety of important people in their  
22 lives about the crime or not to do so right away. And then to  
23 put, you know, some sort of the next concentric circle out from  
24 that on what, based on academic literature and her own  
25 experience, are some of the reasons or operative factors or

P4BQeph2

1 reasons that exist among this population as to why they would  
2 not seek help from law enforcement, medical attention, tell  
3 their closest associates or family members or only do so after  
4 some amount of delay.

5 I think those topics are included within the  
6 government's prior disclosure, to be clear, but I -- rather  
7 than identify it in the language of the government's  
8 disclosure, I think it's more helpful and clear for me to say  
9 these are the topics on which I -- that are encompassed within  
10 the prior notice, but on which I believe my ruling permits her  
11 to testify and nothing outside of that. Obviously you know  
12 they'll have to elicit her experience and background for the  
13 702 ruling, but her substantive testimony should be limited to  
14 those topics.

15 Anything else we need to take up today?

16 MR. ARTHUS: Just the request to charge we'll put that  
17 in writing so we don't eat up --

18 THE COURT: I'm sorry, as to which issue?

19 MR. ARTHUS: There was just a couple of things that we  
20 omitted to ask to be added.

21 THE COURT: If it's quick, do you want to just tell me  
22 now, Mr. Arthus, because I've kept the tennis people waiting.  
23 They can wait another five to ten minutes.

24 MR. ARTHUS: We requested a charge on defendant's  
25 statements in our requests to charge since those were